

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRENDAN WELCH,

Plaintiff,

4:23CV3157

VS.

JAMES C. STECKER, JODI L. NELSON,
JUDGE KARIN NOAKES, and FBI
NEBRASKA/AGENT MCGOWAN,

Defendants.

MEMORANDUM AND ORDER

Plaintiff Brendan Welch, a non-prisoner, filed a Motion seeking leave to add additional pleadings and defendants to his Complaint (the “Motion to Amend”) on November 9, 2023, [Filing No. 13](#), and a “Motion for Extension on Amendment” (the “Motion to Extend”) on November 17, 2023, [Filing No. 14](#). As cause for his Motion to Amend, Plaintiff submits that he needs to add additional defendants, facts, and damages due to many changes that have occurred since the Complaint was filed on August 23, 2023. [Filing No. 13 at 1](#).

[Rule 15](#) of the Federal Rules of Civil Procedure provides “[t]he court should freely give leave [to amend] when justice so requires.” [Fed. R. Civ. P. 15\(a\)\(2\)](#). The applicable standard is summarized in [Foman v. Davis](#), 371 U.S. 178, 182 (1962), which states:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claims on the merits. In the absence of any apparent reason—such as

undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be “freely given.”

Id. In addition, Nebraska Civil Rule 15.1 provides that “[a] party who moves for leave to amend a pleading (including a request to add parties) must file as an attachment to the motion an unsigned copy of the proposed amended pleading that clearly identifies the proposed amendments.” NECivR 15.1(a). In pro se cases, the Court may consider an amended pleading as supplemental to the original pleading. NECivR 15.1(b).

On October 5, 2023, this Court performed an initial review of Plaintiff’s Complaint and found that due to multiple deficiencies it was subject to dismissal (the “October 5 Order”). [Filing No. 7](#). However, the Court sua sponte granted Plaintiff leave to amend, giving him thirty (30) days in which to do so. *Id. at 6*. On October 10, 2023, Plaintiff filed a “Complaint for Violation of Civil Rights” form titled “Supplement” (the “Supplement”), [Filing No. 8](#), which this Court construes as an attempt to comply with the October 5 Order.

It appears that in his Motion to Amend Plaintiff now seeks leave to further amend both his Complaint and Supplement. [Filing No. 13](#). In his Motion to Extend, Plaintiff states both that “the current amended complaint and supplements appear to satisfy all concerns” set forth by the Court in the October 5 Order but then also indicates that he still seeks approval of his request for “leave to add additional defendants and pleadings.” [Filing No. 14](#). Although it is unclear to this Court if Plaintiff still requires amendment of his Complaint, in the interest of justice, Plaintiff shall be given leave to amend to file an amended complaint. Plaintiff is again warned:

An amended complaint will supersede, not supplement, the previously filed Complaint and Supplement. Plaintiff must include all of the claims he wishes to

pursue against all of individuals named as defendants in this case that he wishes to proceed against in his amended complaint, without relying upon or incorporating by reference any allegations made in the original complaints. Plaintiff should be mindful to explain in his amended complaint what each defendant did to him, when and where the defendant did it, and how the defendant's actions harmed him.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion to Amend, [Filing No. 13](#), is granted.
2. Plaintiff's Motion to Extend, [Filing No. 14](#), is granted as consistent with this Order.
3. The Clerk's Office is instructed to terminate the November 20, 2023, deadline for Plaintiff to amend his Complaint.
4. Plaintiff now has through and until January 3, 2024, to file an amended complaint in compliance with this order. If Plaintiff fails to file an amended complaint or otherwise respond or seek an extension to do so prior to the expiration of the December 20, 2023 deadline, the Court shall perform an initial review of the claims set forth in Plaintiff's Supplement, [Filing No. 8](#), to determine whether summary dismissal is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#).
5. The Clerk's Office is directed to set a pro se case management deadline in this case using the following text: **January 3, 2024**: Check for amended complaint.

Dated this 1st day of December, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "JF Bataillon".

Joseph F. Bataillon
Senior United States District Court